IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

Crl.MC.No. 2934 of 2007()

CC.744/2005 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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PETITIONER: ACCUSED NOS.1 AND 2

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1. ASHOK KUMAR,
   ATHIRA ENTERPRISES, ATHIRA BHAVAN, SR.NO.35,
   SOMANATH NAGAR, VADGOANSHERI, PUNE-411 014.

2. JALAJA ASHOK KUMAR,
   PROPRIETRIX, ATHIRA ENTERPRISES,
   ATHIRA BHAVAN, SR.NO.35, SOMANATH NAGAR,
   VADGOANSHERI, PUNE-411 014.

BY ADV. SRI.S.MOHANAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. RAJENDRAN V., S/O. VELAYUDHAN,
   KANICHERIL THEKKETHIL, VALLIKUNNAM,
   PUTHENCHANTHA P.O., MAVELIKKARA.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2934 of 2007

Dated this the 20th day of September, 2007

O R D E R

The petitioners face indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The petitioners reside permanently in Pune. Cognizance has been taken. The petitioners had entered appearance and were enlarged on bail. They were granted exemption from personal appearance also. On 13.08.07, when the case was posted, the petitioners were directed to appear. As they were laid up, they could not appear. Consequently the learned Magistrate has issued warrants of arrest against the petitioners dismissing Annexure-A2 petition filed on their behalf to condone their absence. The petitioners find such warrants of arrest issued by the learned Magistrate chasing them.

2. According to them, they are absolutely innocent. There was no wilful laches on their part at all. They were laid up and an application to that effect has been filed also. The petitioners are willing to appear before the learned Magistrate and seek regular bail. But they apprehend that their application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously.

3. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

5. In the peculiar facts and circumstances of this case, there shall be a direction that the warrants of arrest issued against the petitioners shall not be executed till 08.10.07. The petitioners shall appear before the learned Magistrate and seek bail on or before that date.

(R.BASANT, JUDGE)

rtr/-

(R.BASANT, JUDGE)

rtr/-